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Attorneys for Defendant
Ex'pression Center For New Media

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL DIGIACOMO,

Plaintiff,

v.

EXPRESSION CENTER FOR NEW MEDIA,
INC., d/b/a EXPRESSION COLLEGE FOR
DIGITAL ARTS, et al.,

Defendants.

Case No.: C08-01768-MHP

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF EX'PRESSION
CENTER FOR NEW MEDIA'S REPLY
RE MOTION TO COMPEL
ARBITRATION AND TO DISMISS, OR
ALTERNATIVELY STAY, CASE**

[Federal Arbitration Act (9 U.S.C. §§ 1, *et seq.*); California Arbitration Act (Cal Code Civ. Proc. §§ 1281, *et seq.*); F.R.C.P. 12(b)(1), (6)]

Date: September 8, 2008

Time: 2:00 P.M.

Judge: Hon. Marilyn H. Patel

Dept.: 15, 18th Floor

Location: 450 Golden Gate Ave.
San Francisco, CA 94102

Complaint Filed: April 2, 2008

1 Defendant Ex'pression Center for New Media d/b/a Ex'pression College for Digital Arts
2 ("Ex'pression") hereby request that this Court take judicial notice of the following, in support of
3 Ex'pression' s Reply in Support of Motion to Compel Arbitration and to Dismiss, or Alternatively
4 Stay, Case.

5 1. Pursuant to Federal Rule of Evidence 201(b), Ex'pression respectfully requests that this
6 Court take judicial notice of the Consumer Complaint Information Sheet and Consumer
7 Complaint Form issued by the Bureau for Private Postsecondary and Vocational Education
8 ("Bureau"), an agency of the State of California Department of Consumer Affairs. The
9 Bureau maintains a website which includes forms and information for, among others,
10 students and consumers, and a downloadable version of the Consumer Complaint
11 Information Sheet and Consumer Complaint Form can be found at:
12 http://www.bppve.ca.gov/forms_pubs/consumer_complaint.pdf. A true and correct copy of
13 this Information Sheet and Complaint Form is attached hereto as Exhibit A. Pursuant to Fed.
14 R. Civ. Proc. 201(b), the existence of this form is capable of accurate and ready
15 determination by resort to sources whose accuracy cannot reasonably be questioned.

16
17 2. Further, Ex'pression respectfully requests that this Court take judicial notice, pursuant to
18 Federal Rule of Evidence 201(b), of the American Arbitration Association Consumer Related
19 Disputes Supplementary, at C-8, found at website address:
20 <http://www.adr.org/sp.asp?id=22014#C8>. Rule C-8 relates to Administrative Fees and
21 Arbitrator Fees, and concerns the waiver of such fees should a consumer qualify for same. A
22 true and correct copy of the American Arbitration Association Consumer Related Disputes
23 Supplementary is attached hereto as Exhibit B. Pursuant to Fed. R. Civ. Proc. 201(b), the
24 existence of these rules is capable of accurate and ready determination by resort to sources
25 whose accuracy cannot reasonably be questioned.

Respectfully submitted,

Dated: August 25, 2008

DUANE MORRIS LLP

By: /s/ Eric Sinrod
Eric J. Sinrod
Michael J. Dickman
Attorneys for Defendant
Ex'pression Center For New Media

EXHIBIT A

**Bureau for Private Postsecondary and Vocational Education**

400 R Street Suite 5000, Sacramento, CA 95814-6200
 P.O. Box 980818, West Sacramento, CA 95798-0818
 (916) 445-3427
www.bppve.ca.gov



Rev. 24200311

CONSUMER COMPLAINT INFORMATION SHEET

The following information is intended to help consumers, including students, file a complaint with the Bureau for Private Postsecondary and Vocational Education (Bureau). A complaint can be about a dispute between the consumer and the school and/or its agent, or about a possible violation of the Private Postsecondary and Vocational Educational Reform Act (Act), or applicable regulations.

Before you file a complaint with the Bureau, we suggest that you try to resolve the matter with the school. If that does not work, you can file a complaint with the Bureau using the attached Consumer Complaint Form. The Bureau will investigate your complaint, and may utilize mediation to resolve the problem. Mediation can help resolve many kinds of problems. Your complaint may also lead to additional investigation, and separate disciplinary action against the school.

• HOW TO FILE YOUR COMPLAINT

The Bureau encourages you to file your complaint using the Consumer Complaint Form. Please complete all sections of the Form. Explain in detail what happened, and what steps you have taken to resolve the problem. Include copies of any documents that support your complaint. Copies of correspondence, enrollment agreements, catalogs, loan documents, school records, etc., are examples of documents that may help. A listing of your contacts with the school may also help.

• COMPLAINT MEDIATION PROCESS

Within ten (10) days of receiving your complaint, the Bureau's Enforcement and Compliance Unit will review it and notify you whether the Bureau is legally able to look into it. If the Bureau does not have jurisdiction, the Bureau may refer your complaint to another State or federal agency or organization. The Bureau may refer you to the Better Business Bureau or small claims court. In some cases you may wish to consider alternative options, such as civil court. The Bureau cannot provide legal advice.

If the Bureau has jurisdiction, the Bureau will evaluate your complaint. The Enforcement and Compliance Unit will mail a summary of your complaint to the school, and will ask for a response. After reviewing the response, the Bureau may contact you and/or the school to mediate a solution.

If mediation resolves the problem, the Bureau will confirm the agreed-upon solution in writing, and will close the matter. If the parties cannot work out a solution, the Bureau will notify both parties in writing that it is closing the matter. At this point, the Bureau may suggest to you other ways to resolve the complaint. The Bureau may also take separate disciplinary action against the school.

If you have further questions, please write or telephone the Bureau's Enforcement and Compliance Unit at the address and telephone number indicated above.

PLEASE DO NOT STAPLE

Consumer Complaint Form - Page 1

Rev.24200311

BPPVE

Bureau for Private Postsecondary and Vocational Education

CONSUMER COMPLAINT FORM

Complaint File Number: <div style="border: 1px solid black; width: 100px; height: 15px; margin: 2px 0;"></div> (S.A.I.L. will provide this number) School Code (if applicable): <div style="border: 1px solid black; width: 100px; height: 15px; margin: 2px 0;"></div> Assigned Analyst: <div style="border: 1px solid black; width: 100%; height: 15px; margin: 2px 0;"></div>	FOR OFFICIAL USE ONLY: <div style="font-size: 2em; font-weight: bold; margin-top: 10px;">BPPVE</div>	Date Received: <div style="border: 1px solid black; width: 100px; height: 15px; margin: 2px 0;"></div> / <div style="border: 1px solid black; width: 100px; height: 15px; margin: 2px 0;"></div> / <div style="border: 1px solid black; width: 100px; height: 15px; margin: 2px 0;"></div> Complaint Type: <input type="checkbox"/> Approved Facility <input type="checkbox"/> Unapproved Facility
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*Consumer Section Begins Here.*Please complete all applicable sections of this form.**1. School**

a. Facility Name:

b. Street Address:

c. City:

d. State:

e. Zip Code:

2. Complainant / Student

a. First Name:

b. Last Name:

c. Street Address:

d. City:

e. State:

f. Zip Code:

g. Phone Number: () -

3. State your current student status (e.g., enrolled, graduated, cancelled, withdrawn, terminated) and identify the educational program in which you were enrolled.

a. Student Status:

b. Educational Program Title:

4. Please describe the events that led to your complaint. Specify pertinent dates, monies paid, balances owed, amounts claimed by third parties, etc. Use additional paper if necessary. Please attach any documents that will help describe the problem and substantiate your allegations.



PLEASE DO NOT STAPLE
 Consumer Complaint Form - Page 2
 Rev.24200311

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Bureau for Private Postsecondary and Vocational Education

5. How would you like this complaint resolved? What do you want the school to do?

6. Are you represented by an attorney regarding this matter? If yes, please provide your attorney's name, address and phone number.

☐ Yes ☐ No

7. If you have filed a claim in any court regarding this matter, please state the name of the court, and indicate the status of the case.

The filing of this complaint does not prohibit you from filing a civil action.

I hereby certify that all of the information I have given above is true and complete to the best of my knowledge.

I also authorize the Bureau to provide a summary of my complaint and supporting documents to the involved school, and to any public agency that has authority or jurisdiction over the school, or to any private accrediting agency from which the school has received accreditation.

YOUR SIGNATURE _____

DATE _____

Please complete all applicable sections of this form.

Notice on Collection of Personal Information

Collection and Use of Personal Information: The Department of Consumer Affairs and the Bureau for Private Postsecondary and Vocational Education collect the information requested on this form as authorized by Business and Professions Code Sections 108, 129, 325 and 326 and Education Code Sections 94835 and 94960. The Department and/or the Bureau for Private Postsecondary and Vocational Education uses this information to follow up on your complaint and to investigate violations of laws under its jurisdiction.

Providing Personal Information Is Voluntary: You do not have to provide the personal information requested. If you do not wish to provide personal information, such as your name, home address, or home telephone number, you may remain anonymous. In that case, however, we may not be able to contact you or help you resolve your complaint.

Access to Your Information: You may review the records maintained by the Bureau for Private Postsecondary and Vocational Education that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

Possible Disclosure of Personal Information: We make every effort to protect the personal information you provide us. In order to follow up on your complaint, however, we may need to share the information you give us with the business you complained about or with other governmental agencies. This may include sharing any personal information you gave us.

The information you provide may also be disclosed in the following circumstances:

- In response to a Public Records Act request, as allowed by the Information Practices Act;
- To another governmental agency as required by state or federal law;
- In response to a court or administrative order, a subpoena, or a search warrant.

Contact Information: For questions about this notice or access to your records, contact the Bureau's Complaint Unit at (916) 445-3427, by mail at the Bureau for Private Postsecondary and Vocational Education, 400 R Street Suite 5000, Sacramento, CA 95814-6200, or by e-mail at: bppve@dca.ca.gov. For questions about the Department of Consumer Affairs' privacy policy or the Information Practices Act, contact the Office of Privacy Protection, 400 R Street, Sacramento, CA 95814, (866) 785-9663, or e-mail privacy@dca.ca.gov.


10629

Consumer Complaints Forms are available at our Web site: www.bppve.ca.gov.
 Please complete with Adobe Acrobat or, if in handwriting, use a black pen.



EXHIBIT B

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[ABOUT US](#)

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[FILE A CASE](#)

[AAA UNIVERSITY](#)

[NEUTRALS](#)

[CONTACT US](#)

[PRINT VERSION](#)

Consumer-Related Disputes Supplementary PROCEDURES

Effective September 15, 2005

[About the AAA](#)

[The AAA's Consumer Rules](#)

[Availability of Mediation](#)

[Administrative Fees](#)

[Arbitrator's Fees](#)

[Glossary of Terms](#)

[Claimant](#)

[Respondent](#)

[ADR Process](#)

[Arbitration](#)

[Desk Arbitration](#)

[Telephone Hearing](#)

[In Person Hearing](#)

[Mediation](#)

[Neutral](#)

[Case Manager](#)

[ADR Agreement](#)

[ADR Program](#)

[Independent ADR Institution](#)

[Resolution of Consumer-Related Disputes Supplementary Procedures](#)

[C-1. Agreement of Parties and Applicability](#)

[C-2. Initiation Under an Arbitration Agreement](#)

[C-3. Initiation Under a Submission](#)

[C-4. Appointment of Arbitrator](#)

[C-5. Proceedings on Documents \("Desk Arbitration"\)](#)

[C-6. Expedited Hearing Procedures](#)

[C-7. The Award](#)

[C-8. Administrative Fees and Arbitrator Fees*](#)

[Administrative Fees](#)

[Arbitrator Fees](#)

[Fees and Deposits to be Paid by the Consumer:](#)

[Fees and Deposits to be Paid by the Business:](#)

INTRODUCTION

Millions of consumer purchases take place each year. Occasionally, these transactions lead to disagreements between consumers and

businesses. These disputes can be resolved by arbitration. Arbitration is usually faster and cheaper than going to court.

The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

About the AAA

The American Arbitration Association (AAA) is a not-for-profit, private organization. We offer a broad range of conflict management services to businesses, organizations and individuals. We also provide education, training and publications focused on ways of settling disputes out of court.

The AAA's Consumer Rules

The AAA has developed the Supplementary Procedures for Consumer-Related Disputes for consumers and businesses that want to have their disagreements resolved by arbitrators. People throughout the world can make use of our services.

Availability of Mediation

Mediation is also available to help parties resolve their disputes. Mediations are handled under AAA's Commercial Mediation Procedures.

Administrative Fees

The Association charges a fee for its services under these rules. The costs to the consumer and business depend on the size and nature of the claims. A fee schedule is included at the end of this Supplement. In certain cases, fees paid by the consumer are fully refundable if the dispute is settled before the arbitrator takes any action.

Arbitrator's Fees

Arbitrators get paid for the time they spend resolving disputes. The arbitrator's fee depends on the type of proceeding that is used and the time it takes. The parties make deposits as outlined in the fee schedule at the end of this Supplement. Unused deposits are refunded at the end of the case.

GLOSSARY OF TERMS

Claimant

A Claimant is the party who files the claim or starts the arbitration. Either the consumer or the business may be the Claimant.

Respondent

A Respondent is the party against whom the claim is filed. If a Respondent states a claim in arbitration, it is called a counterclaim. Either the consumer or the business may be the Respondent.

ADR Process

An ADR (Alternative Dispute Resolution) Process is a method of resolving a dispute out of court. Mediation and Arbitration are the most widely used ADR processes.

Arbitration

In arbitration, the parties submit disputes to an impartial person (the arbitrator) for a decision. Each party can present evidence to the arbitrator. Arbitrators do not have to follow the Rules of Evidence used in court.

Arbitrators decide cases with written decisions or "awards." An award is usually binding on the parties. A court may enforce an arbitration award, but the court's review of arbitration awards is limited.

Desk Arbitration

In a Desk Arbitration, the parties submit their arguments and evidence to the arbitrator in writing. The arbitrator then makes an award based only on the documents. No hearing is held.

Telephone Hearing

In a Telephone Hearing, the parties have the opportunity to tell the arbitrator about their case during a conference call. Often this is done after the parties have sent in documents for the arbitrator to review. A Telephone Hearing can be cheaper and easier than an In Person Hearing.

In Person Hearing

During an In Person Hearing, the parties and the arbitrator meet in a conference room or office and the parties present their evidence in a process that is similar to going to court. However, an In Person Hearing is not as formal as going to court.

Mediation

In Mediation, an impartial person (the mediator) helps the parties try to settle their dispute by reaching an agreement together. A mediator's role is to help the parties come to an agreement. A mediator does not arbitrate or decide the outcome.

Neutral

A Neutral is a word that is used to describe someone who is a mediator, arbitrator, or other independent, impartial person selected to serve as the independent third party in an ADR process.

Case Manager

The Case Manager is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she only manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Manager is the parties' contact point for almost all aspects of the case outside of any hearings.

ADR Agreement

An ADR Agreement is an agreement between a business and a consumer to submit disputes to mediation, arbitration, or other ADR processes.

ADR Program

An ADR Program is any program or service set up or used by a business to resolve disputes out of court.

Independent ADR Institution

An Independent ADR Institution is an organization that provides independent and impartial administration of ADR programs for consumers and businesses. The American Arbitration Association is an Independent ADR Institution.

SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER-RELATED DISPUTES

C-1. Agreement of Parties and Applicability

- (a) The Commercial Dispute Resolution Procedures and these Supplementary Procedures for Consumer-Related Disputes shall apply whenever the American Arbitration Association (AAA) or its rules are used in an agreement between a consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. The AAA's most current rules will be used when the arbitration is started. If there is a difference between the Commercial Dispute Resolution Procedures and the Supplementary Procedures, the Supplementary Procedures will be used. The Commercial Dispute Resolution Procedures may be found on our Web site. They may also be obtained from the Case Manager.
- (b) The Expedited Procedures will be used unless there are three arbitrators. In such cases, the Commercial Dispute Resolution Procedures shall apply.
- (c) The AAA may substitute another set of rules, such as the Real Estate or the Wireless Industry Arbitration Rules, for the Commercial Dispute Resolution Procedures in some cases.
- (d) Parties can still take their claims to a small claims court.

C-2. Initiation Under an Arbitration Agreement

- (a) The filing party (the "claimant") must notify the other party (the "respondent"), in writing, that it wishes to arbitrate a dispute. This notification is referred to as the "demand" for arbitration. The demand should:

- ' briefly explain the dispute,
- ' list the names and addresses of the consumer and the business,
- ' specify the amount of money involved,
- ' state what the claimant wants.

The claimant must also send two copies of the demand to the AAA at the time it sends the demand to the respondent. When sending a demand to the AAA, the claimant must attach a copy of the arbitration agreement from the consumer contract with the business. The claimant must also send the appropriate administrative fees and deposits. A fee schedule can be found in Section C-8 at the end of this Supplement.

- (b) The AAA shall confirm receipt of the demand to the parties.
- (c) The respondent may answer the demand and may also file a counterclaim. The answer must be sent to the AAA within ten calendar days after the AAA acknowledges receipt of claimant's demand. The answer must:
- ' be in writing,
 - ' be sent, in duplicate, to the AAA,
 - ' be sent to the claimant at the same time.
- ' If the respondent has a counterclaim, it must state the nature of the counterclaim, the amount involved, and the remedy sought.
- (d) If no answer is filed within the stated time, the AAA will assume that the respondent denies the claim.
- (e) The respondent must also send the appropriate administrative fees and deposits. A fee schedule can be found in Section C-8 at the end

of this Supplement. Payment is due ten calendar days after the AAA acknowledges receipt of claimant's demand.

C-3. Initiation Under a Submission

Where no agreement to arbitrate exists in the contract between the consumer and the business, the parties may agree to arbitrate a dispute. To begin arbitration, the parties must send the AAA a submission agreement. The submission agreement must:

- ' be in writing,
- ' be signed by both parties,
- ' briefly explain the dispute,
- ' list the names and addresses of the consumer and the business,
- ' specify the amount of money involved,
- ' state the solution sought.

The parties should send two copies of the submission to the AAA. They must also send the administrative fees and deposits. A fee schedule can be found in Section C-8 at the end of this Supplement.

C-4. Appointment of Arbitrator

Immediately after the filing of the submission or the answer, or after the deadline for filing the answer, the AAA will appoint an arbitrator. The parties will have seven calendar days from the time the AAA notifies them, to submit any factual objections to that arbitrator's service.

C-5. Proceedings on Documents ("Desk Arbitration")

Where no claims or counterclaims exceed \$10,000, the dispute shall be resolved by the submission of documents. Any party, however, may ask for a hearing. The arbitrator may also decide that a hearing is necessary.

The arbitrator will establish a fair process for submitting the documents. Documents must be sent to the AAA. These will be forwarded to the arbitrator.

C-6. Expedited Hearing Procedures

A party may request that the arbitrator hold a hearing. This hearing may be by telephone or in person. The hearing may occur even if the other party does not attend. A request for a hearing should be made in writing within ten calendar days after the AAA acknowledges receipt of a claimant's demand for arbitration. Requests received after that date will be allowed at the discretion of the arbitrator.

In a case where any party's claim exceeds \$10,000, the arbitrator will conduct a hearing unless the parties agree not to have one.

Any hearings will be conducted in accordance with the Expedited Procedures of the Commercial Dispute Resolution Procedures. These procedures may be found on our Web site. They may also be obtained from the Case Manager.

C-7. The Award

(a) Unless the parties agree otherwise, the arbitrator must make his or her award within fourteen calendar days from the date of the closing of the hearing. For Desk Arbitrations, the arbitrator has fourteen calendar days from when the AAA sends the final documents to the arbitrator.

(b) Awards shall be in writing and shall be executed as required by law.

(c) In the award, the arbitrator should apply any identified pertinent contract terms, statutes, and legal precedents. The arbitrator may grant any remedy, relief or outcome that the parties could have received in court. The award shall be final and binding. The award is subject to review in accordance with applicable statutes governing arbitration awards.

C-8. Administrative Fees and Arbitrator Fees*

Administrative fees and arbitrator compensation deposits are due from the claimant at the time a case is filed. They are due from the respondent at the time the answer is due. The amounts paid by the consumer and the business are set forth below.

*Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under of oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-877-528-0879, if you have any questions regarding the waiver of administrative fees. (Effective January 1, 2003)

Administrative Fees

Administrative fees are based on the size of the claim and counterclaim in a dispute. They are based only on the actual damages and not on any additional damages, such as attorneys' fees or punitive damages. Portions of these fees are refundable pursuant to the Commercial Fee Schedule.

Arbitrator Fees

For cases in which no claim exceeds \$75,000, arbitrators are paid based on the type of proceeding that is used. The parties make deposits as set forth below. Any unused deposits are returned at the end of the case.

Desk Arbitration or Telephone Hearing \$250 for service on the case

In Person Hearing \$750 per day of hearing

For cases in which a claim or counterclaim exceeds \$75,000, arbitrators are compensated at the rates set forth on their panel biographies.

Fees and Deposits to be Paid by the Consumer:

If the consumer's claim or counterclaim does not exceed \$10,000, then the consumer is responsible for one-half the arbitrator's fees up to a maximum of \$125. This deposit is used to pay the arbitrator. It is refunded if not used.

If the consumer's claim or counterclaim is greater than \$10,000, but does not exceed \$75,000, then the consumer is responsible for one-half the arbitrator's fees up to a maximum of \$375. This deposit is used to pay the arbitrator. It is refunded if not used.

If the consumer's claim or counterclaim exceeds \$75,000, or if the consumer's claim or counterclaim is non-monetary, then the consumer must pay an Administrative Fee in accordance with the Commercial Fee Schedule. A portion of this fee is refundable pursuant to the Commercial Fee Schedule. The consumer must also deposit one-half of the arbitrator's compensation. This deposit is used to pay the arbitrator. This deposit is refunded if not used. The arbitrator's compensation rate is set forth on the panel biography provided to the parties when the arbitrator is appointed.

Fees and Deposits to be Paid by the Business:

Administrative Fees:

If neither party's claim or counterclaim exceeds \$10,000, the business must pay \$750 and a Case Service Fee of \$200 if a hearing is held. A portion of this fee is refundable pursuant to the Commercial Fee Schedule.

If either party's claim or counterclaim exceeds \$10,000, but does not exceed \$75,000, the business must pay \$950 and a Case Service Fee of \$300 if a hearing is held. A portion of this fee is refundable pursuant to the Commercial Fee Schedule.

If the business's claim or counterclaim exceeds \$75,000 or if the business's claim or counterclaim is non-monetary, the business must pay an

Administrative Fee in accordance with the Commercial Fee Schedule. A portion of this fee is refundable pursuant to the Commercial Fee Schedule.

Arbitrator Fees:

The business must pay for all arbitrator compensation deposits beyond those that are the responsibility of the consumer. These deposits are refunded if not used.

If a party fails to pay its fees and share of the administrative fee or the arbitrator compensation deposit, the other party may advance such funds. The arbitrator may assess these costs in the award.

For more information please contact our customer service department at 1-800-778-7879

Rules, forms, procedures and guides are subject to periodic change and updating.

AAA236

FILE A CASE **CONTACT US**

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